IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.1120 OF 2006 IN EXA. NO.248 OF 2003
IN
SUMMARY SUIT NO.4322 OF 1998

Barter Leasing & Finance Ltd. ..Plaintiff.
Vs.
Shri. Umesh B.Duggal and ors. ..Defendants.
And
Shri. Praful F.Shah. ..Respondent.

Mr. Kishore Jain with Mr.M.A.Shah i/by A.G.Shah for the plaintiff.

None for the Defendants.

CORAM : R.S. MOHITE,J.
DATED : 17/10/2006.

P.C.

1. Heard Advocate for the plaintiff.

2. This chamber summons has been taken out by the original plaintiff who is a decree holder. After obtaining decree, the plaintiff filed execution proceedings and when the said execution proceedings were pending, the chamber summons was taken out by the present applicant claiming that he has obtained an order of attachment before judgment which was passed by the Civil Court at Thane. The said applicant is absent today. It appears that after he filed the chamber summons and after hearing him this court ordered sale of the immovable property which was a flat. The said

proceedings are now lying in the Sheriff's office. This Chamber summons is taken out for obtaining a part of the amount which is lying in the Sheriff's office to mark decree of the plaintiff's satisfied. In my view, the order of attachment before judgment was obtained with a view to secure the claim of the applicant before the civil court at Thane. The attachment was on the flat and the said flat has been sold pursuant to the further order passed by this court. There is no order of attachment in so far as the sale proceedings are concerned. However, the applicant who is not present today will have to be given an opportunity to obtain adequate relief to secure his claim from the Thane Court if he so desires. In the circumstances, chamber summons is made absolute in terms of prayer clause (b) subject to the condition that payment will not be made to the plaintiff for a period of 12 weeks from today and it will be open for the applicant to apply before the Civil Judge, Thane where his suit is pending for attachment before judgment in respect of the sale proceeds. If such an application is made, the same will be decided on its own merits. The present plaintiff should be given notice in case any such application for attachment before judgment of the sale proceeds is made.

(R. S. MOHITE, J.)

:3: